

nurse aide who engages in routine perineal cleaning would not be an offender. It does not matter whether the offender's caregiving services were volunteered or paid. Neither does the location of the activity make any difference. Exceptions exist for consensual sexual activity between a vulnerable adult and that person's caregiving spouse, or for consensual relationships between vulnerable adults and caregivers hired, supervised, and directed by them. 33 V.S.A. §6902(1)(D).

In 2006 the Legislature added an **age gap exception** when both parties have consented to sexual activity and one of the parties is a minor. Ordinarily it is considered rape if a person older than 16 engages in a sexual act with a person younger than 16, but under the **age gap exception**, it is not a crime if the older person is less than 19 years old and the younger person is at least 15 years old. For instance, consensual sex between an 18-year-old and a 15-year-old is no longer a crime. The age gap exception also applies to the crime of lewd and lascivious conduct with a child and the crime of luring a child (internet solicitation).

Age Gap Exception

14-year-old	15-year-old	15-year-old
+	+	+
18-year-old	18-year-old	19-year-old
Crime	Not a crime	Crime

SEXUAL OFFENSES IN VERMONT FALL INTO SEVERAL CATEGORIES:

- SEXUAL ASSAULT AND AGGRAVATED SEXUAL ASSAULT
- LEWD AND LASCIVIOUS CONDUCT
- SEXUAL ACTIVITY WITH A VULNERABLE ADULT BY A CAREGIVER
- ANY OF THE FOLLOWING OFFENSES WHERE THE VICTIM IS A CHILD:
 - KIDNAPPING IF SEXUAL ASSAULT OCCURS OR IS THREATENED
 - LEWD AND LASCIVIOUS CONDUCT WITH A CHILD
 - PROSTITUTION-RELATED OFFENSES
 - POSSESSION OF CHILD PORNOGRAPHY
 - INTERNET SOLICITATION OF A CHILD UNDER 16
 - USE OF A CHILD IN A SEXUAL PERFORMANCE

CHAPTER 4 :

PRESENTENCE INVESTIGATION

If a person is found competent to stand trial, the case will move toward a decision. There may be a trial before a judge or jury, or the individual may decide to plead guilty. Trial procedures and plea bargains are outside the scope of this manual.

In a criminal prosecution, if the individual is convicted by the judge or jury, or enters a plea of guilty, the next phase is to determine the sentence. Particularly in sex crimes where the offender's mental health or capacity is an issue, the sentencing process often includes a **Presentence Investigation (PSI)**. A PSI is required in all serious sex offense cases. The purpose of the PSI is to provide information about the defendant to the judge to assist in disposition. A PSI should provide the background and perspectives of key people, including the victim, to explore the impact of the offender's developmental disabilities.

Typically, the judge orders a PSI, although the prosecutor or the defense attorney may also request one. Sometimes the court will order a **psychosexual evaluation** (see Chapter 14: Assessment and Psychosexual Evaluations). A PSI should be completed in 60 days (90 days if it includes a psychosexual evaluation).

The PSI report is written by a **Correctional Services Specialist (CSS)**, an employee of the Department of Corrections (DOC) (see Chapter 13: Supervision by Department of Corrections). It includes detailed information about the victim's perspective and the defendant's:

- offense of record.
- criminal record.
- family and personal history.
- employment and financial history.
- substance abuse issues.
- prior periods of community supervision and/or incarceration.
- level of risk.

- long-term public protection from individuals who have no interest in treatment because these offenders will likely remain incarcerated until the maximum release date.

In 2006 the Legislature established **indeterminate life sentencing** for most sex offenders. This means that, after being released from prison, the offender will continue to be under supervision by Corrections for life, and may be reincarcerated for life if he reoffends or violates conditions.

The **presumptive minimum sentence** for a second offense of lewd and lascivious conduct is five years in prison and ten years for a third or subsequent offense. The offender has to serve the full presumptive minimum in prison unless the judge makes written findings that the interests of justice and public safety will be served by a shorter prison term. The presumptive minimum for aggravated sexual assault is ten years with a mandatory five years in prison. The **minimum sentence** for sexual assault is three years in prison with a maximum term of life; the judge does not have authority to sentence someone to less than three years.

CONDITIONAL RE-ENTRY AND PAROLE

After the inmate has served his minimum term of imprisonment, he is eligible for supervised community release through **conditional re-entry** (formerly referred to as “furlough”) and **parole**. Some sentences have a minimum term of zero. These inmates are eligible for conditional re-entry or parole immediately after sentencing.

Starting in 2006 the Department of Corrections is required to develop a **community reentry support team** for high risk sex offenders. Corrections, the offender and the community support team are to start working together to develop the plan at least 12 months before the offender’s release date. The plan needs to include residence, treatment employment, a support/accountability network, and a plan for victim safety. The plan may include victim wraparound services if the victim wants them. Corrections needs to consider the proximity of the proposed residence to any school, camp, park, or other place where there are potential victims.

Conditional re-entry and parole are granted with specific conditions with are supervised by Department of Corrections field staff (for more details, see Chapter 13: Supervision by Department of Corrections). The period of

) Corrections supervision and the ability to enforce specific conditions ends at the expiration of the maximum term of the offender's sentence.

COURTS HAVE FIVE ALTERNATIVES TO USE IN SENTENCING (13 V.S.A. §7030):

- DEFERRED SENTENCE
- PROBATION
- SUPERVISED COMMUNITY SENTENCE (SCS)
- SENTENCE OF IMPRISONMENT
- PRE-APPROVED CONDITIONAL RE-ENTRY (FORMERLY CALLED FURLOUGH)

Updates and Duration of Required Registry Information

Offenders who are required to register must:

- notify their probation officer of any change of address, employment, or school **within three days** of the change for as long as they are being supervised in the community by the Vermont Department of Correction.
- after they are discharged from Department of Corrections supervision, notify VCIC of any change of address, employment, or school **within three days**.
- register **within three days** of moving out of state with the sex offender registry in the new state (and also notify VCIC of the change of address).
- complete an annual update form sent by VCIC **within ten days** of receipt. (The form is sent at the time of the offender's birthday.)

A sex offender must continue to comply with the registration requirements for **ten years** from the date he is discharged from the supervision of the Vermont Department of Corrections, unless he is subject to Lifetime Registration. VCIC will notify the registrant when he is no longer required to report. An offender who doesn't comply with the registry requirements may be arrested without a warrant and fined and/or sent to prison.

Lifetime Registration applies to:

- individuals who have at least one prior conviction for an offense that would require them to register in Vermont or another jurisdiction of the United States and are convicted in Vermont of a subsequent offense after September 1, 2001.
- individuals who have been convicted of sexual assault or aggravated sexual assault after September 1, 2001.
- individuals who have been determined by a court to be a Sexually Violent Predator. An offender determined by a court to be a **Sexually Violent Predator** must update his information every **90 days**.

If a Lifetime Registrant believes he is no longer dangerous, he can petition the court to be removed from the registry.

USES AND NOTIFICATION OF REGISTRY INFORMATION

The law requires the Department of Public Safety to notify the victim when the offender is released from prison and any time the sex offender changes address, and **if** the victim requests the information **and** such disclosure is necessary to protect the victim or the general public.

VCIC passes along registration information to local law enforcement. The information may then be used by the local officials only for law enforcement purposes, except as follows:

VCIC, the Department of Corrections, **or** local law enforcement officials may release limited registry information, **including current address**, to a member of the public if the person requesting the information is asking about a specific offender and has a legitimate concern about public safety of herself or another person. When a person requests information, the law enforcement agency will verify her identity and keep a record of who called and the information that was released. The identity of any victims will not be provided under any circumstances. Law enforcement officials may release more extensive information about sex offenders who are subject to Internet posting (see the section to follow entitled "Internet Posting of the Sex Offender Registry").

Law enforcement may proactively notify members of the community who are likely to encounter a registrant. Law enforcement may also conduct broader notifications in consultation with VCIC and the Department of Corrections **under circumstances which constitute a compelling risk to public safety**.

DS agencies and others may obtain information from the registry if there is a specific reason for making the request, such as concern that a person who one of their clients is spending time with may be a sex offender.

INTERNET POSTING OF THE SEX OFFENDER REGISTRY

Internet posting of information about sex offenders began in 2004 in Vermont and can be found at http://www.dps.state.vt.us/cjs/s_registry.htm. The information posted on the Internet includes most registry information, including the town of residence **but not the street address**. The Internet posting includes a digital photograph of the offender.

Sex offenders whose information is posted on the Internet include those who:

- were convicted of aggravated sexual assault or kidnapping and sexual assault of a child.
- have more than one conviction **for any sexual offense**
- have an outstanding arrest warrant for failure to register.
- have been found by a court to be a Sexual Predator.
- have not complied with sex offender treatment.
- are designated by the Department of Corrections as "high risk."¹

Information on the Internet registry is organized and available by search by the sex offender's name and by the county of residence. **People who use the registry no longer have to register their name.** It is a crime to use registry information to injure or harass a sex offender.

Other Registries in the State of Vermont

The Vermont Sex Offender Registry is separate and distinct from the registries maintained by the Department of Aging and Independent Living and the Department of Children and Families. Briefly:

The Department of Aging and Independent Living maintains the Adult Protective Services (APS) Registry, a registry of individuals who have been found, in an administrative investigation by Adult Protective Services, to have abused, neglected or exploited a vulnerable adult. It is confidential, except for reports disclosed to law enforcement agencies, certain state agencies, certain employers, and, under very limited circumstances, members of the public. 33 V.S.A. §6911.

¹ The Department of Corrections is responsible for developing rules for deciding who is a "high risk" offender and who is considered not to have complied with treatment. At the time of publication, these rules were not yet final.